MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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MINUTES
HJR 35 SUBCOMMITEE

October 6, 1999
Helena, Montana

The second meeting of the House Joint Resolution (HJR 35) subcommittee was called to order by Senator Chuck Swysgood, Chairman, on October 6, 1999 at 8:30 a.m., in Room B-7 of the Federal Building. The following HJR 35 members were present:

Senator Swysgood, Chairman
Senator Keenan
Senator Waterman
Senator Franklin
Representative Taylor, Vice-Chairman
Representative Soft

Representative McCann and Representative Barnhart were excused.

Approval of Minutes

Representative Soft moved that the minutes of the August 19, 1999, meeting be approved as presented. The motion carried unanimously.

Standing Agenda Items

Lois Steinbeck, Senior Fiscal Analyst, addressed the Montana State Hospital (MSH) population handout. (Exhibit 1) A line was added to calculate the average daily population (ADP) by commitment type as requested by Representative Barnhart. For the month of August the ADP was 162, which is one greater than July. Dan Anderson, Administrator, Addictive and Mental Disorders Division, Department of Public Health and Human Services (Department), distributed copies of the same report for the month of September. (Exhibit 2) The ADP for September was 155. On an annual basis the ADP is 159. The ADP has gone down 18 since June.

Mr. Anderson provided information on expenditures compared to appropriations (Exhibit 3). This handout shows the various parts of the mental health program and total funds budgeted for each. It also shows reported expenditures to date. The Medicaid fee-for-service and the MHSP fee-for-service are benefit costs that include a 2 to 3 month payment lag. The table on the back of the handout shows the number of providers in the network. Each month the Department counts the providers and notes either new providers or a loss of providers. The table at the bottom of the handout shows the total number of persons eligible for Medicaid fee-for-service, MHSP fee-for-service, and the pharmacy program. Attachment C (Exhibit 4) is a breakdown of the total budget for general fund, state special and federal funds. **Senator Swysgood** asked that the Department provide a complete report at the next meeting, which shows expenditures compared to the appropriation and expenditures to date and what fund types paid the expenditures.

Senator Waterman asked if the change in the provider network is a change from the previous month or previous year. Mr. Anderson stated it was a change from the previous month. **Senator Waterman** also asked why psychiatrists would be listed as out-of-state, if there are many cases where a psychiatrist is not available, and if anything is being done to solicit more psychiatrists. Mr. Anderson explained that a psychiatrist listed as out-of-state would be a psychiatrist enrolled in the program as a Medicaid provider for Montana and who provides services to individuals in an out-of-state facility. They are not coming to Montana to provide services. Mr. Anderson also stated there is no outreach program at this point. He is aware of only a few cases where a psychiatrist was not available and in those cases the Department tries to locate one. Randy Poulsen, Chief, Mental Health Services Bureau, stated the most recent information he has is specific to a new psychiatrist in the Billings area and that it is taking approximately 3 to 4 months for an appointment.

Matt McKinney, Director, Montana Consensus Council, reported that the Mental Health Oversight Advisory Council has asked the Montana Consensus Council to help it get organized and provide direction. The Montana Consensus Council interviewed all 19 members of the Council and put together a report for review and consideration at the next meeting.

Mike Billings, Administrator, Operations and Technology Division gave a brief overview of paid Mental Health Access Plan (MHAP) claims. He stated that the $12.8 million reserve fund is

expended. Most of the expenditures have paid appealed claims, but some have been paid through the dispute resolution process. The $14,000 that remains will cover most of the remaining claims except for the claims that are potentially litigable. The hospitals are wrestling with Magellan over claims of about $6 million. **Senator Swysgood** asked Mr. Billings if the claims that are being litigated are the responsibility of Magellan when a decision is rendered as to the validity. Mr. Billings said yes, those claims would be the responsibility of Magellan, not the state.

Senator Keenan commented on TANF funds. He is working on flexibility of the use of TANF funds and more flexibility with state maintenance of effort funds. National Conference of State Legislators (NCSL) will make a presentation at the next Children, Family, Health and Human Services Committee meeting on November 19, 1999.

Mr. Poulsen referred to his memo of September 28, 1999 regarding the closing of the Big Sky Group Home in Billings. (Exhibit 5) Normative Services of Wyoming closed the group home because of concern with the organization's ability to maintain the quality of service that was the standard for their facility. They intend to use the facility for a therapeutic foster care program.

Representative Soft asked if there is a way to track the services children are receiving to determine what services are needed. Mr. Poulsen stated that it is possible by tracking the authorizations from Mountain-Pacific Foundation, but that data will not give actual utilization. Children can have several authorizations in a month for different services.

Representative Taylor asked Mr. Poulsen if Normative Services closed all of their facilities in Montana. Mr. Poulsen stated to his knowledge only the Big Sky Group Home had closed. Normative Services intends to continue providing mental health services in Montana.

Senator Swysgood asked Mr. Poulsen if step-down services are not available where are the individuals going and who is responsible for the costs. Mr. Poulsen stated that if there are no step-down services available the individuals would stay at the level of care they are at. If they are in residential treatment, the state and Medicaid are picking up the cost. Inpatient hospital

care is reimbursed on a DRG basis. The hospital picks up the cost if they can't move a patient out.

Ms. Steinbeck explained to the committee a concern about potential cost shift. When utilization review determines that residential care is no longer necessary and there are no step-down services, there is a cost shift from the Medicaid program, which is funded 30 percent general fund and 70 percent federal funds, to the foster care program, which must pay 100 percent general fund. That's why it's important to find out which division in the Department is funding the services and where the children are going.

Mr. Poulsen stated that this situation reflects a fundamental difference between how the managed care program worked and how the fee-for-service program works. Under managed care Montana Community Partners was responsible for the cost of services and they were responsible for finding an alternative placement. Under the fee-for-service program Mountain-Pacific Foundation does not find alternative placements. There is no single agency responsible for finding those placements.

Representative Soft asked Mr. Poulsen when the gaps in service have been identified, how does the Department plan to work with all the providers across Montana in developing the services. Mr. Poulsen explained that the providers are still assessing what the needs are and they are reluctant to commit to developing services until they know that there is going to be a demand for that service. The Department's first approach is to talk to the providers and find out what is hindering development of those services or what they need to support the development of the services.

Panel Discussion on Adult Mental Health Services

Ms. Steinbeck stated that the panel discussion on adult mental health services will provide a broad overview of how mental illness and mental health issues touch a variety of levels of our government. The panel members are: **Sheriff Slaughter**, Gallatin County; **Leslie Halligan**, Deputy County Attorney, Missoula County; **Debra Dirkson**, CEO, Montana State Hospital (Exhibit 6); Ron **Balas**, Director, Montana Mental Health Nursing Care Center (Exhibit 7); **Larry Lovelace**, Manager Region IV, Disability Services Division (Exhibit 8); **Dan Anderson**,

Administrator, Addictive and Mental Disorders Division (Exhibit 9); and **Pete Yazak**, Family Advocate/Consumer. (Below is a summarized list of concerns they expressed.) (Exhibit 10)

Sheriff Slaughter – Gallatin County

- statutorily- required transportation time, cost, distance from supports
- lack of proper training for law enforcement
- lack of appropriate alternatives to jail
- cost to local government for treatment and sometimes hospitalization

Leslie Halligan – Missoula County

- lack of community services and options for diversion in communities with out psychiatric services
- county costs for hospitalization
- statutory limitations on law enforcement intervention only if person is considered imminently dangerous

Debra Dirkson - MSH

- dual diagnosis
  - CD (26%)/significant substance abuse (34%)
  - development disabilities (small population)
- lack of community forensic step down programs
- transitional living in community
  - lack of placements

Ron Balas – Montana Mental Health Nursing Care Center

- community nursing homes reluctant to accept placements
- Larry Lovelace – Disability Services Division
- integration of MH/DD services
- cross training, same language development
- lack of services for those who age out of traditional DD services

Dan Anderson – DPHHS, AMDD

- distribution of services - especially rural
- need for more intensive community based services
- need successful consumer run alternatives

Pete Yazak – Family Advocate/Consumer

- funding limitations
- dual diagnosis, especially CD -need to work with other agencies
- need stability
  - providers
  - system.

Senator Swysgood thanked the panel for their comments.

Representative Soft asked Sheriff Slaughter in addition to training, what else would be a solution to the transportation problem. Sheriff Slaughter suggested crisis stabilization centers to provide the option of holding persons they are not sure about and try to keep them in their community. And if they need to be transported have a more appropriate option other than law enforcement to do that.

Representative Soft asked Mr. Lovelace if 40 to 50 percent of people with developmental disabilities who need some level of mental health support are classified as dual diagnosed. Mr. Lovelace said yes and in many cases those issues are not creating an immediate crisis.

Representative Soft also asked what the Disability Services Division is doing to address assessment services, how the Division is reaching out to the communities that are providing services to dual diagnosed individuals, and if it is possible for providers who are providing services to dual diagnosed individuals to access the DD funding stream. Mr. Lovelace replied that during discussions regarding budget priorities they identify a need to talk about individuals with dual diagnosis and about models that might better serve these individuals, and present that as a priority. He also stated that the individuals who need support are not intensive and that DD could train their staff to handle them. The small group that has severe mental health issues need the expertise of the mental health system.

Senator Franklin asked Mr. Anderson if there is any data on where the money is being spent at the community level in terms of diagnostic type categories. Mr. Anderson explained that Exhibit 9 shows categories of service that can be broken down further. The billing system has the

capabilities of looking at diagnostic categories. Mr. Poulsen stated that the data will be available but it will be some months before they have updated information.

Senator Waterman asked if video conferencing can be used to avoid transportation problems. Sheriff Slaughter stated that it has been used but the courts don't have confidence in it. In Gallatin County the system is not being used because lawyers want their clients in court with them. Ms. Halligan stated that Missoula County uses video conferencing primarily for patients that are difficult to transport. It is not used as often as it could be because of some individuals desire to be present at the hearing.

Senator Keenan asked if there are guidelines for authorization of services. Mr. Anderson stated that under MHAP every service would have to be prior authorized. Under the fee-for-service program the only services that have to be prior authorized are out-of-home and inpatient hospital and partial hospitalization services. There are clinical guidelines for the different levels of care. The guidelines were based on the guidelines Magellan used and were amended.

Senator Keenan expressed concern regarding the shift of burden onto the provider when services are no longer deemed medically necessary and the state stops paying for services. Mr. Poulson stated this refers to the availability of step-down services and responsibility for finding alternative living arrangement. Mr. Poulson also stated he doesn't believe Mountain-Pacific Foundation has ever terminated an authorization and quit paying for services. The facilities always know in advance how long an authorization is for. They have the opportunity to request additional authorization two weeks before the end of the authorization. Crisis stabilization facilities are prior authorized on a retrospective basis. There is no prior authorization required for crisis response services.

Senator Franklin asked if any agencies have had experiences with authorizations being done in a short time frame. Leslie Halligan stated that this primarily relates to children services. It is her understanding that there have been next-day de-certifications. Because of the lack of available alternative and step-down facilities it is hard to find alternative placement with one day notice. Mr. Poulsen stated that next day de-certifications ended in June.

Ms. Steinbeck referred to her memo of October 6, 1999 (Exhibit 11). The fee-for-service system severs the link between responsibility to find and fund alternatives to placement in higher-end services that existed in the managed care program. Two weeks advance notice sometimes is not enough time to find alternative services for difficult to place children.

Senator Swysgood asked Sheriff Slaughter if training for officers on how to handle the mentally ill has been proposed to the Law Enforcement Academy. Sheriff Slaughter said that it has and he would like to see this be a part of the curriculum but feels that it may be a funding issue.

Mental Health Ombudsman Report

Bonnie Adee, Mental Health Ombudsman, reported to the subcommittee about her discussions with consumers, family members and providers. Many people around the state still believe that a managed care system will begin on July 1, 2000. Because there are a lot of expectations and assumptions concerning that, people need to be informed. Most people believe that the system now operated by the Department is doing better in operational procedures than the system under Magellan, including authorizations and payment. There are some issues with eligibility and the Department is very aware of those and has a plan in place to address them.

The eligibility issues are: 1) providers who provide services to clients on an urgent basis and don't understand how to request expedited eligibility; and 2) how individuals become eligible for mental health services upon discharge from the correctional system.

Consumer issues are: 1) coverage for therapeutic home days for adults; 2) authorization for partial hospitalization, which requires a certificate of need process; 3) access to case management; 4) loss of inpatient services; 5) change in terms of pharmacy services; and 6) reduced operation hours for drop-in centers.

Service gap issues are: 1) ability to access psychiatry, particularly in rural areas and for children; 2) nursing homes do not have a lot of services available; 3) availability of services when a youth becomes an adult; and 4) what are the incentives for those with mental illnesses to recover.

Program of Assertive Community Treatment (PACT) Panel

Ms. Steinbeck referred to two handouts: 1) Topics and Issues that the PACT Panel Will Address (Exhibit 12; and 2) synopsis of each the pilot programs (Exhibit 13). The panel members are **Sandy Mihelish**, Family/Consumer Advocate; **Jeff Sturm**, Golden Triangle Mental Health Center; and **Dan Anderson**, Addictive and Mental Disorders Division.

The following is a summary of the video (Hospital Without Walls) on the PACT program. The video was produced by the Department of Psychiatry at Duke University in 1993.

The PACT program is for adults with severe and persistent mental illness. The program was started in Madison, Wisconsin about 26 years ago and is proven to be extremely effective in rehabilitating people with psychiatric disabilities. The characteristic of PACT is that it is a self contained clinical team that is the primary provider of treatment, rehabilitation, and social services. PACT teams are mobile teams that provide services where consumers live and work rather than in agency settings. PACT provides highly individualized services that address the constantly changing needs of people with severe mental illnesses. PACT teams should be available to provide the necessary services 24 hours a day, 7 days per week, 365 days per year. Participants in the program should be consumers with symptoms that seriously impair their ability to function in the community. Priorities should be given to individuals with long-term psychiatric disabilities and in addition, participants should be consumers with high service needs.

Ms. Mihelish explained that the PACT program is a lifetime program. From a family member perspective PACT offers security in peace of mind and it offers hope. Families have had to assume much of the care of their relatives with serious mental illness under the traditional system of care. Because of the strengths of the PACT model, it gives families a safety net.

Jeff Sturm discussed the pilot programs for Helena and Billings. The Helena program will serve 60 clients, 24 of whom will be from MSH. The goal for the Billings program is 40 clients, 24 of whom will be from MSH. The staff will consist of one team leader, two licensed therapists, two RN's, four other individuals that will have primary specialties, one program assistant, and a .5 psychiatrist in Helena and a .3 psychiatrist in Billings. Some of the outcomes that will be measured are symptom reduction, housing situations, employment, substance abuse, and

involvement with the criminal justice system. The process to select PACT participants will be based on criteria from the PACT model manual, primarily clients with certain diagnoses. Currently, there are 46 clients that meet the criteria for PACT from the MSH. The PACT team will work closely and become more active with the MSH on the discharge of clients. The PACT staff has to be a strong team staff and share common goals. They need to be dedicated, enthusiastic and optimistic, have good judgement and the ability to resolve crises, and be team oriented. A typical PACT team day would include a daily meeting to discuss every client.

Dan Anderson, reported on the process of planning the PACT pilots. Several factors that contributed to the Department's interest in PACT: 1) the need to have that level of service available in the community; 2) Sandy Mihelish, Consumer Advocate for NAMI, was a strong advocate of implementing PACT; and 3) PACT was the number one service indicated by the MSH to be the most beneficial in reducing the population. The two criteria for selecting the communities were: 1) interest on part of the mental health center; and 2) communities where there is a high admission rate to MSH. Each program must have 12 consumers from MSH by January 1, 2000. Training will be provided for both teams prior to accepting consumers. The teams will be able to consult with the trainers on an on-going basis. Basic operating budgets have been determined for both pilots. There are two possibilities for funding the PACT program: 1) the Department will guarantee to meet expenses defined in the budget and the mental health center will bill as it provides services to consumers by PACT staff and the amounts recouped from the fee-for-service revenue would be deducted from the guaranteed amount, and 2) a Medicaid state plan amendment would be in place that will establish regular Medicaid reimbursement.

Senator Waterman asked Mr. Anderson if the Department is committed to increasing funds if the program is under funded. Mr. Anderson stated "absolutely, within our overall budget." **Senator Waterman** also asked if it would be possible to access chemical dependency (CD) funding. Mr. Anderson stated he thinks that would be very difficult. The CD money now goes to community based chemical dependency programs. The way to access those resources would be partnerships between the local mental health agency and the chemical dependency agency. **Senator Waterman** commented that she is concerned about the staffing level and if the model is under funded that it will fail.

Representative Soft asked Mr. Anderson if the funding would be subject to legislative approval. Mr. Anderson responded that the intent is to expand Medicaid services.

Ms. Mihelish stressed the importance of several key components of the PACT model. They are: 1) 24 hours a day, 7 days a week, 365 days a year availability of the PACT team; 2) how the Department will gather the outcome measures; 3) someone from the Department to monitor the PACT programs; and 4) adequate training of the PACT team.

Senator Franklin asked Mr. Anderson or Mr. Sturm to address whether the PACT pilot will be available 24 hours a day, 7 days a week, 365 days a year. Mr. Anderson replied the staff coverage on duty is 12 hours a day, Monday through Friday, 12 hours a day on Saturday and Sundays in Helena, and 8 hours a day in Billings. Those are the minimum requirements. Both mental health centers have 24-hour crisis telephone lines. In both communities the on-call person can access PACT staff if those staff are available. Mr. Anderson feels this on-call system meets the standard in the PACT manual. **Senator Franklin** also asked if they would be hiring more staff for the on-call services. Mr. Sturm replied that they would try the model and then reassess the situation. They can extend or reduce staff time.

Senator Swysgood expressed concern regarding funding for the startup costs and what services will suffer by not have monies available. Also, if the pilot is directed at clients that are hard to serve with serious mental illnesses, the communities and the services the communities provide will be at risk by not having adequate staff. **Senator Swysgood** also stated that an expansion of Medicaid would be an expansion of general fund money and legislative approval would be necessary if the pilot program is successful.

Ms. Mihelish provided the subcommittee these handouts: Training Police Officers About Mental Illness (Exhibit 14); and Recommendations for the King County Mental Health Court (Exhibit 15).

Olmstead Decision

Susan Fox, Research Analyst, Legislative Services Division, referred to the memo from Mr. Petesch dated September 15, 1999 (Exhibit 16) regarding the legal ramifications of the United States Supreme Court Olmstead case. The Olmstead case involved an interpretation of the Americans with Disabilities Act. A public entity is required to make reasonable modifications to avoid discrimination on the basis of disability. A public entity is not required to take steps that would fundamentally alter the nature of the entity's program. The Olmstead case involves two mentally retarded women who were voluntarily admitted to a hospital and confined for treatment. The patients challenged their continued institutionalization, and the State of Georgia defended by contending that the immediate transfer of the patients would fundamentally alter the State program and also inadequate funding was the basis for their institutionalization, not discrimination. The United States Supreme Court affirmed three basic elements: 1) states are required to provide community based-treatment for persons with mental disabilities when state treatment professionals determine that such placement is appropriate; 2) the affected persons do not oppose such treatment; and 3) placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities.

Russ Cater, Chief Legal Counsel, DPHHS, responded he does not feel it is necessarily a victory for either party but it does clarify some issues within the ADA. He does not see it as having a tremendous impact on the Department. The Department needs to continue to look at the services it provides and make sure it is moving towards integration.

Review of MCP Community Services Plan

Senator Swysgood noted the MCP service plan is in the notebooks for subcommittee review. (Exhibit's 17, 18, & 19)

Mr. Poulsen distributed a handout on the Service Needs Identified in the MCP's New Services Plan Compared to Currently Available Services. (Exhibit 20) When the Department developed the Medicaid and Mental Health Services Plan, it tried to cover all or as much of the services that MCP had in place or was planning.

Public Comment

Several representatives from various associations offered comments to the subcommittee regarding the Olmstead Decision, community commitment, housing and community education, and financial incentives. Comments were received from: Anita Roessman, Montana Advocacy Program; Kathy McGowan, Montana Council for Mental Health Centers; and Andrea Merrill, Mental Health Association of Montana.

Senator Swysgood asked Mr. Anderson if the $42,000 per month to operate the pilot program in Helena includes hospitalization, housing or medications. Mr. Anderson stated that it does not. **Senator Swysgood** also asked what part of the mental health budget would the money come from for the two pilot programs. Mr. Anderson stated there would be a significant reduction in costs when the 48 clients are moved from the MSH. The Department will be spending on an ongoing basis below what they were originally budgeted. Also, they anticipate savings in inpatient services in communities. Some of the services that PACT will provide are services clients would have been receiving in the community programs. The Department also anticipates a reduction in the use of day treatment. Mr. Sturm feels that housing in Helena is reasonably available.

Senator Swysgood commented that the Department is already spending more money than was appropriated for the MSH and until they reduce the population, they are spending any savings there would have been.

Senator Waterman asked how much was spent last year for the 48 patients targeted for the PACT program. Ms. Dirkson reported that it would cost $5.5 million to serve those 48 persons for a year in MSH.

Study Plan

Ms. Steinbeck addressed the study plan (Exhibit 21). The study plan format identifies the strategic issues, focused goals, an action step/timeline, and outcomes. The panel presentations provided information and issue identification for all of the strategic issues. The subcommittee agreed to focus on one strategic issue and that is the development of appropriate community services.

Next HJR 35 Subcommittee Meeting

The next HJR 35 subcommittee meeting is set for Thursday, January 20th and Friday, January 21st. Lunch at Golden Triangle Mental Health Center will be added to the agenda for January. The meeting for August 2000 has been changed to Wednesday, August 16th.

Adjournment

Meeting adjourned at 4:30 p.m.

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Sen. Chuck Swysgood, Chairman

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Diane McDuffie, Committee Secretary